

REMARKS

In the above referenced office action, the Examiner has re-presented an election of species requirement and indicated that Applicant's previous response was not fully responsive. Applicant's original remarks are presented below. Applicant continues to traverse the election of species requirement as baseless and unsupported for the numerous reasons previously articulated and requests examination of all claims.

Applicant asserts that the previous response was fully responsive. Claims 1-11, 18, 26-34, 39-48, 50, 53 and 54 are generic and Applicant elected species III which includes claims 21, 22-25, 35-37 and 49. Thus, claims 1-11, 18, 22-37, 39-50, 53 and 54 should be examined. Again, Applicant asserts that this "requirement" does not make sense when the application is read and considered in context and the Examiner is respectfully requested to withdraw the requirement in its entirety. For example, species II, as defined by the Examiner is by definition generic. If any there is any uncertainty as to what is claimed or presented, Applicant specifically requests the courtesy of a telephone interview to discuss the matter.

Previous Remarks

Five species have been identified but no more than a conclusory statement has been provided in support of this separation. Applicant respectfully traverses this requirement.

In the present example, a novel pacing modality referred to as FIDDI is provided. Such a mode is relevant in the context of an implantable medical device having pacing capabilities. Thus, adding a "lead" to a claim does not define a new species. Likewise describing additional functions or capabilities in a device does not define separate species from the modality itself.

The Examiner indicates Species II is the "base mode" of FIDDI. This is equivalent to indicating that these claims are generic (FIDDI is applicable to all of the claims and embodiments). Species III and IV indicate what happens when a certain number of ventricular pacing pulses are delivered in FIDDI – either a mode switch out of FIDDI is more or less automatic or a Mode Supervisor or similar algorithm controls.

Various claims are subgeneric in that they apply to both. Only one claim is relevant to FAPTT. The designation of Species I does not make sense when the full application is considered in context.

Thus, claims 1-11, 18, 26-34, 39-48, 50, 53 and 54 are generic and relate to Species II as well as all of the other "species." Claims 12, 21, 22-25, 35-37 and 49 relate to Species III. Claims 13-17, 19, 23, 36, 37, 38, 49, 51 and 52 relate to Species IV. Thus, claims 23, 36, 37 and 49 relate to both Species III and IV. Claim 20 relates to Species V, as defined by the Examiner.

Applicant requests examination of Groups II (all generic claims) and Group III which therefore includes claims 1-12, 18, 21-37, 39- 50, 53 and 54.

The Commissioner is authorized to charge any deficiencies and credit any overpayments to Deposit Account No. 13-2546.

Respectfully submitted,

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Date

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